

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ISAAC Q.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011110791

DECISION

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino California on December 21, 2011.

The Inland Regional Center (agency) was represented by Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his mother.

Oral and documentary evidence was received and the matter was submitted on December 21, 2011.

Procedural History

Sometime prior to August 18, 2010, claimant requested 48 hours per month of respite services. As a result of claimant's request an informal meeting occurred and, on August 18, 2010, the agency and claimant's mother entered into a resolution agreement. The August 18, 2010, agreement provided as follows: "IRC will fund 48 hrs/m of PPS respite as a temporary exemption while family pursues Institutional Deeming & IHSS. Once IHSS is awarded, respite reduces to 30 hrs/m. If IHSS is denied, IRC will evaluate to either assist with IHSS appeal or if exemption should be extended." (Exh. 5)

ISSUES

1. Should claimant's exemption remain in effect?
2. If his exemption remains in effect should claimant's respite hours be increased from 48 hours per month to 52 hours per month?

FACTUAL FINDINGS

1. Claimant is a 6-year-old male who qualifies for agency services due to mild mental retardation and Autistic Disorder. He resides with his parents and his two brothers, ages 6 and 3. Claimant requires assistance with taking his medications. He is able to eat with at least one utensil, with spillage. He will toilet when prompted. At School and at the Carolyn Wylie Center claimant remains dry and toilets when prompted. Claimant has wetting and/or soiling problems at least once per week during waking hours. At home, claimant purposely has bladder accidents about five times per week. Claimant has bowel movement accidents approximately two times per week, again on purpose (to get attention or when he is upset). Claimant assists with some personal care activities by performing helpful movements. Mother brushes claimant's teeth and bathes him. Claimant will not allow his hair to be combed. Claimant can dress himself, with assistance. He is not able to zip, snap, or tie shoe laces. Claimant requires constant supervision during waking hours to prevent injury/harm. Claimant has disruptive social behaviors that interfere with social interactions at least one time per week. Claimant tends to scream, tantrum, hit, or toss things at home. Claimant has self-injurious behaviors, mainly consisting of scratching and biting himself. Mother reports that the following changes have recently occurred:

“There has been a noticeable increase in aggressive behaviors towards parents and siblings (pulling hair, scratching, biting, pinching, poking eyes, throughout the day); increase in self-injurious behaviors (biting self, scratching arms and legs and pulling [own] hair); increase in bowel and bladder accidents during the day and night in the home and public settings; increase of food allergies; implementation of a rigid diet and several supplements to help [claimant's] GI problems; increase of eating unsafe [sic] behaviors (he is overstuffing his mouth, he has developed an obsession for food and there is a high potential for choking); increase in tantrums 3-5 times per day with a duration of 25-45 minutes, in the home and public settings due to not obtaining what he desires. [Claimant] has not [sic] fear to [sic] danger; he attempts to touch ovens and stoves. He is constantly looking to go outdoors.”

2. Claimant's diagnoses include the following: craniosynostosis repair (cranial expansions—he has undergone two surgeries); defects in his skull; intracranial pressure (he has an LP shunt); vision impairment (papilladema, estropia and hyperopic astigmatism);

pseudotumor cerebri; seizure disorder; severe communication impairment; feeding difficulties; autism; mental retardation and kyphosis (deformation of the spinal column).

3. Claimant receives the following services: attends a special education class five times per week for 3.5 hours; Loma Linda Speech Clinic one hour per week; Redlands University Turesdail for communicative disorders two times per week for one hour; speech therapy with Senseabilities two times per week for 45 minutes; Traxx hypotherapy one time per week for one hour; applied behavioral analysis at the Wylei Center for 10 hours per week; occupational therapy one hour per week; adaptive physical education 30 minutes per week; speech therapy at Loma Linda Rehabilitation Center 30 minutes per week; and 48 hours per month of agency funded respite. Additionally, claimant was successful in obtaining IHSS hours and is currently receiving 188 IHSS hours per month.

4. If claimant's respite hours are reduced from the current level of 48 hours per month to 30 hours per month claimant will be receiving some type of services for 112 hours per week or 16 hours per day (not including transportation time to and from appointments).

5. Claimant's mother is an extremely conscientious parent and she would like as much respite time as possible so she can take a break from the exhausting challenges she faces daily. Respite has allowed claimant's mother to relax and enjoy some "free time" knowing claimant is safe and well cared for in her absence.

6. Mother is to be commended for her commitment to claimant and her other children. She selflessly gives of herself to ensure her children's health, safety and welfare; however, insufficient evidence was presented to support her request, on claimant's behalf, to continue claimant's exemption to the legislatively mandated 90 hour per quarter limit on respite hours.

LEGAL CONCLUSIONS

1. California Welfare and Institutions Code section 4686.5 places the following restrictions on the amount of respite services the agency may provide: "A regional center shall not purchase more than 21 days of out-of-home respite services in a fiscal year nor more than 90 hours of in-home respite services in a quarter, for a consumer." An exemption to the restrictions may only be granted if claimant demonstrates that the intensity of his care and supervision needs are such that additional respite is necessary to maintain him in the family home, or there is an extraordinary event that impacts the family member's ability to meet claimant's care and supervision needs.

2. Claimant was successful in obtaining 188 hours per month of IHSS hours from the county. In view of this fact, the evidence presented during the instant hearing was insufficient to justify a continued exemption from the legislative mandate to limit in-home respite services to 90 hours per quarter (30 hours per month).

ORDER

The agency's decision to reduce claimant's respite hours from 48 hours to 30 hours per month is upheld.

DATED: January 2, 2012.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.